IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

No. 434

UNITED TRANSPORTATION UNION, as successor to the BROTHERHOOD OF RAILROAD TRAINMEN,
Petitioner,
vs.
THE STATE BAR OF MICHIGAN,
Respondent.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### PRELIMINARY STATEMENT

This matter has been pending since January, 1959, with an original injunctive decree being entered in 1962 by the trial Court from which an appeal was taken by petitioner to the Michigan Supreme Court. However, before argument therein, this Court handed down its opinion in *Brotherhood of Railroad Trainmen v. Commonwealth of Virginia, ex rel. Virginia State Bar,* 377 U.S. 1, 12 L. Ed. 2d 89, 88 S. Ct. 1113, (1964).[1] Accordingly, with due regard

[1] This decision of this court will hereafter be referred to as *Trainmen.* Other decisions involving the Brotherhood of Railroad Trainmen will give the full title and reference to the official citation.

to the "ultimately controlling effect" of that decision, the case was remanded to the trial Court for further proceedings which were had in 1968 resulting in an injunctive decretal judgment in like terms and conditions as the final decretal judgment of the Virginia Courts after remand of *Trainmen* to the State courts of that Commonwealth. This controversy has had the full and deliberate consideration of not only the trial Court on two occasions but the Michigan Supreme Court and it is submitted that, as noted by the majority opinion of that Court, (App. E, p. 39)[2] the present decree, being in accord with the final Virginia decree must be considered as consistent with constitutional principles as laid down in *Trainmen* and with the other decisions of this court discussed *infra*.[3] Accordingly, respondent submits that the Petition for Writ of Certiorari herein should be denied.

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[2] References to the appendices immediately following the petition for writ of certiorari herein and appearing on pages 21-45 thereof will be indicated in this manner. References to that portion of the certified record consisting of the 478 pages of the printed Volumes I and II of the appellant's appendix filed in the Michigan Supreme Court will be referred to herein as R. App. p. 1a, etc. In reviewing the petition for writ of certiorari herein, we noted the references to the record appeared to be 17 page numbers higher than the numbers printed on the two volumes of the appendices filed with the Michigan Supreme Court. We inquired of petitioner's attorney if the certified record had been renumbered but received no helpful information, petitioner's attorney advising that he did not have a copy of the certified record with the page numbers indicated thereon. He accordingly suggested that we refer to the appendix as filed in the Michigan Supreme Court using the page numbers as printed thereon.

[3] *N.A.A.C.P. v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963) and *United Mine Workers v. Illinois Bar Association*, 389 U.S. 217, 19 L. Ed. 2d 426, 88 S. Ct. 353 (1967).

## QUESTIONS PRESENTED

1. Does a State Court Injunction Restraining a Railroad Union from Certain Activity in Connection with the Recommendation of Certain Selected Lawyers to its Members in the Handling of F.E.L.A. Litigation, Which injunction is Duplicative of the Final Injunction in the Virginia Courts After Remand of *Trainmen*, Violate any Rights Guaranteed to the Union by the First and Fourteenth Amendments to the United States Constitution?

2. Does the Injunctive Judgment Entered in 1968 upon Remand from the Michigan Supreme Court in Light of the Decision of this Court in *Trainmen* Without the Taking of Additional Testimony Violate Due Process when the Prior Injunctive Decree, More Comprehensive in Scope, Entered After a Full Hearing, Contained Substantially all of the Injunctive Provisions Provided in the Later 1968 Injunction?

## COUNTER-STATEMENT

The partial quotation appearing at the top of page 7 of the petition is misleading and is taken out of context. Rather, during the opening statement of counsel for Respondent (R. App. p. 69a), he indicated that it was his position that all of the allegations of the Bill of Complaint "Are admitted except as to paragraph 9 alleging that large numbers of cases and claims of members of the Brotherhood of Railroad Trainmen residing in Michigan *** have been unlawfully and improperly solicited ***". Shortly thereafter, Respondent's counsel stated that he had concluded and "*** we are prepared to proceed with our proof under paragraph 9 which is in dispute" (R. App. p. 75a). On the following page, Respondent's counsel made the quoted

statement apparently by inadvertence as he follows this by stating "However we are ready to go ahead with proof if counsel does not want to make an opening statement." (R. App. p. 76a). He then proceeds to put the witness, David J. Walsh, on the stand who testifies to those matters (R. App. p. 78a-114a).

The trial Court's 1962 decision and decree did far more than prohibit the "Making of unsolicited calls" upon injured persons as is claimed on page 8 of the petition herein. The six respects in which the defendant was enjoined are set forth at R. App. p. 125a-126a. (See also the comparison of the six provisions of that decree with the 1968 decree appearing in footnote 5 on pages 15-16 hereof.) In the 1962 decree, the petitioner was restrained from (a) advising injured persons of their rights or doing other acts constituting the practice of law, (b) negotiating contracts of employment for legal services, (c) accepting money or gratuities from lawyers for obtaining legal employment, (d) making unsolicited calls upon injured persons to obtain legal employment for lawyers, (e) engaging in activity condemned by the Illinois Supreme Court in *In re Brotherhood,* 150 N.E. Rep. 2d 163 and, (f) conspiring with any person to violate the laws of Michigan or the Canons of Legal Ethics. (The latter provision is not involved in this case as such provision was not contained in the 1968 Decretal Judgment.)

## ARGUMENT

### I.

**DOES A STATE COURT INJUNCTION RESTRAINING A RAILROAD UNION FROM CERTAIN ACTIVITY IN CONNECTION WITH THE RECOMMENDATION OF CERTAIN SELECTED LAWYERS TO ITS MEMBERS IN THE HANDLING OF F.E.L.A. LITIGATION, WHICH INJUNCTION IS DUPLICATIVE OF THE FINAL INJUNCTION IN THE VIRGINIA COURTS AFTER REMAND OF TRAINMEN, VIOLATE ANY RIGHTS GUARANTEED TO THE UNION BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?**

The conclusionary statements made by petitioner (P. 11) that the decree here involved was entered "*** with the purpose of interfering with the railroad workers in the exercise of their constitutional rights." and that the "equal justice under law" principle was accorded "the State Bar alone and never considered as applying to the union, Appendix E, p. 37" is wholly incorrect. Reference to Appendix E, p. 37-38 clearly shows that the opinion below recognized and started with the premise that this court "Is not apt to order that either the Brotherhood or our State Bar suffer or enjoy more in Michigan than do the corresponding antagonists in Virginia, ***". The basic fallacy in the entire argument and position of the petitioner is that the court below blindly adopted the decree approved by the Virginia Supreme Court in *Brotherhood of Railroad Trainmen v. Commonwealth of Virginia ex rel.: Virginia State Bar,* 207 Va. 182, 149 S.E. 2d 265 (1966) and although both the Virginia Supreme Court and the Court below recognized this court had held the respondent's basic plan must not be affected or forbidden and that the lawyers involved must be accorded "a like protection" both courts proceeded to ignore that admonition. The specific

holding of this Court in that regard is found in the penultimate paragraph of the majority opinion as follows:

> "We hold that the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities it too must fall. And, of course, lawyers accepting employment under this constitutionally protected plan have a like protection which the State cannot abridge" (377 U.S. 1, 8).

Contrary to petitioner's position, neither the final 1965 Virginia decree nor the decree entered in this case infringe the rights protected as delineated in the portion of the opinion quoted above. And petitioner is likewise in complete error when it is stated on page 14 of the petition that the first injunctive provision prohibiting the "*** giving or furnishing legal advice to *** members or their families ***" is in contravention of the holding of this Court as set forth in the paragraph of the opinion quoted on that page of the opinion. The freedom guaranteed to railroad workers to gather together and to talk together freely as to the best course to follow in asserting their statutory rights under the Safety Appliance Act and the Federal Employers Liability Act and to advise concerning the need for legal assistance and to recommend lawyers to whom they can rely upon is not abridged nor is such activity prohibited under the above-mentioned injunctive provision. It only prohibits the Brotherhood from "furnishing legal advice" or in other words, practicing law.

Petitioner goes on (Pet. p. 14-15) to state in general terms that it also objects to each of the remaining five

injunctive provisions on similar grounds and contends that each can be misconstrued by the "railroads to strike at the heart of the plan. Each can be used to chill the exercise of constitutional rights." This fear is completely unfounded. By the same token, under the guise of protection of constitutional rights the organized Bar should not be handcuffed in any way in vigorously demanding that the canons of professional ethics and/or the provisions of the new ABA Code of Professional Responsibility should be complied with and that solicitation of actions proscribed by the Canons and/or Code be dealt with by appropriate disciplinary proceedings and/or injunctive relief.[4]

Petitioner, in effect, contends as it did before the Court below that the decretal judgment under consideration by the Court below and affirmed by that Court did not grant to petitioner "The full sweep of the constitutional rights delineated for the *Brotherhood* by the United States Supreme Court in *** 377 U.S. 1 (1964)." Petitioner contends that the Court below relied upon the Virginia Supreme Court's interpretation of this Court's decision in *Trainmen* rather than upon this Court's opinion itself and that there must be proven "substantial evils flowing from the peti-

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[4] While this case was pending before the court below, the Michigan Bar was severely criticized by the news media for failing to take action to curb the very practices which are prohibited in the injunction involved herein. Because of the pendency of this case before the Michigan Supreme Court, the respondent was hesitant to institute other actions until the court of last resort in Michigan had spoken on the matter in light of this court's decisions in *Button*, *Trainmen* and *Mine Workers*. Typical of such unfavorable publicity were headlines "Workmen's Compensation Abused—Multi-Million Claims Racket Charged". The news articles and editorials told of lawyers openly soliciting workmen's compensation claims and union personnel referring retirees to designated attorneys for the handling of claims. Since the decision of the Michigan Supreme Court on March 9, 1970, several injunction actions have been filed in the Wayne County Circuit Court against attorneys allegedly improperly soliciting workmen's compensation claims which has softened the news media hue and cry.

tioner's activities" before any injunction can issue. What petitioner is actually saying in making this argument is that the Virginia Supreme Court of Appeals misconstrued the holding of this Court in *Trainmen* which is not true. As a matter of fact, the Virginia Court went beyond the specific holding of this Court and struck down certain provisions of the injunction prohibiting solicitation which had been inserted by the Richmond Chancery Court. The Virginia Supreme Court held that the mandate of this Court prohibiting interference with the Brotherhood's program of recommending union selected counsel to handle members' death and disability claims arising out of employment did not permit drawing a line between solicitation and recommendation. See *Brotherhood of Railroad Trainmen v. Commonwealth of Virginia ex rel. Virginia State Bar*, 207 Va. 182, 149 S.E. 2d 265 (1966). Accordingly, the provisions against solicitation which were contained in the 1965 decree of the Richmond Chancery Court were deleted.

Petitioner's contention (Pet. p. 16) that the Court below while accepting "the Virginia opinion", indicated a lack of willingness "to accept this Court's mandate in *Brotherhood*" which is clearly unwarranted, is again the same contention that was made in the Court below that that Court, in effect, ceded "jurisdiction to the Virginia Court". On the contrary, the Virginia Court concerned itself completely in determining whether or not the injunctive provisions of the 1965 decree were consistent with the mandate of this Court as set forth in the majority opinion in *Trainmen*. That Court said: (207 Va. 186)

> "Our duty to obey the mandate of the Supreme Court is clear. In rendering a decision today, we cannot alter our course because of disagreement with Mr. Justice Black's characterization of the Brotherhood's practice of securing employment of union-selected counsel as an exercise of benevo-

> lence for the protection of union members and their families (377 U.S. at 2-4, 84 S. Ct. at 1114-1115, 12 L. ed. 2d at 91-92). Nor can we alter our course because of agreement with the prediction in Mr. Justice Clark's dissenting opinion: 'The potential for evil in the union's system is enormous and . . . will bring disrepute to the legal profession' (377 U.S. at 12, 84 S. Ct. at 1119, 12 L. ed. 2d at 96)."

The 1965 Virginia decree attempted to draw a line between solicitation and recommendation by prohibiting solicitation only and, in an effort to advise what was meant by "solicitation", the decree referred to source materials outside of the document, viz; the vast body of the common law, the statutes of Virginia and the canons of the American Bar Association adopted in that State. The Virginia Supreme Court recognized that by whatever term the activities of the Brotherhood should be labeled, even be it "solicitation", the mandate of this Court was that the Union should be free to pursue its established plan, and hence, the full thrust and, if you will, "breathing space" of this Court's decision was given full recognition by the Virginia Court. Accordingly, petitioner's contention that the Virginia Supreme Court opinion amounts to something less than the mandate of this Court is completely without foundation. The Virginia Court said in that case: (207 Va. 189)

> "But the Court's characterization of the Brotherhood's activities as 'recommending' does not justify the narrow interpretation advocated by the State Bar. The Court's opinion forbids restraint of activities held constitutionally protected. We must leave the Brotherhood free to pursue these activities, however they may have been characterized by the Supreme Court or may be characterized under Virginia law.

"As recognized in the opinion, the Brotherhood carries out its activities pursuant to an established plan. The plan is obviously designed to channel legal employment to lawyers selected by it. In carrying out the plan, the Brotherhood seeks out each injured trainman or a member of his family. It not only gives general advice about the wisdom of engaging counsel, but also recommends the employment of specific Regional Counsel selected by the Brotherhood.

"The Supreme Court expressly sustained the Brotherhood's objection to the restraint against its activities in 'soliciting or encouraging . . . legal employment . . . of lawyers (selected by the Brotherhood)'. While sustaining this objection, the Court recognized that the Brotherhood was asking protection from restraint of activities that admittedly resulted in the channeling of legal employment to particular lawyers. (See the language of Mr. Justice Black's opinion quoted in the fourth and fifth paragraphs of this opinion.)

"We interpret the opinion as denying the State's right to restrain these activities. The Court held that the Brotherhood's activities fell within the protection of the First Amendment guarantees of free speech, petition and assembly. In the Court's opinion, the State had failed to show any appreciable public interest that would justify restraint of the Brotherhood's pursuit of constitutionally protected activities."

It is submitted that Justice Carrico in his dissenting opinion spoke with candor when he stated:

"I do not agree that the labor union involved in this case should be permitted to solicit legal business for its sixteen regional counsel and I cannot believe that the United States Supreme Court ever intended such a result to ensue. ***

"The decree of the chancellor respects the union's recently declared right to advise injured workers to obtain legal advice and to recommend specific lawyers. The decree forbids solicitation. I would affirm the actions of the chancellor in those respects.

"I would leave it up to the Supreme Court itself to extend its ruling to permit the union to solicit legal business, if that was its intention in the first place. While my powers of prescience are no better than my abilities of clairvoyance, I believe that there is a good chance that the Court, if given the opportunity, will say that it had no such intention."

If this Court grants certiorari in this case, the "opportunity" will present itself to this Court to take a fresh look at *Trainmen* and the later decision in *Mine Workers* and perhaps hopefully this Court will forthrightly say that it had no intention in those decisions to sanction solicitation either on the part of a labor union or its members or its counsel.

Further there is no sound basis for the petitioner's contention that the decretal injunction in this case "grossly and erroneously" restricts the petitioner's constitutional rights contrary to the holding of this Court in *United Mine Workers v. Illinois Bar Association,* 389 U.S. 217, 19 L. Ed. 2d 426, 88 S. Ct. 353 (1967) (Pet. p. 16-17). On pages 15-16 *infra,* in footnote 5 are set forth the seven injunctive provisions in the decree below with comparable provisions of the former 1962 decree. To demonstrate that these provisions do not contravene the holdings of this Court in either the *Trainmen or Mine Workers* cases, we set forth seriatim the true extent of each of the seven injunctive restraints with the reasons why they do not violate the decisions of this Court under the aforementioned cases:

a. *Furnishing legal advice:*—The Supreme Court held that the conduct of a union in advising its mem-

bers of the advisability of consulting particular legal counsel was constitutionally protected. The Court did not authorize the union or any of its members to themselves practice law by giving or furnishing legal advice.

b. *Informing lawyers that an accident had happened and furnishing the names and addresses for the purpose of obtaining legal employment:* —The Supreme Court held that the union could advise its members to consult specific attorneys or could itself retain an attorney to represent those of its members needing legal services. The decision of the Court contemplates that, having been advised of the desirability and availability of counsel, each union member would himself decide whether to avail himself of such service. The Court did not sanction the dissemination by the union of the names of injured members to attorneys in order to facilitate mass solicitation of claims from those members, who having been apprised of the availability of the service, do not desire to avail themselves of it.

c. *Suggesting that a recommended lawyer will defray expenses*:—The Supreme Court held that the union could properly recommend to its members that they employ specific attorneys where such recommendation was predicated upon the expertise which, in the judgment of the union, these selected attorneys possessed. The Court did not sanction arrangements between the union and the recommended attorneys to induce the members to retain a particular attorney solely because one attorney was prepared to furnish improper and unethical financial benefits to a prospective client which another practitioner would not.

d. *Controlling the fees charged:* —The Supreme Court held that the union could properly retain an attorney to represent its members by paying him a salary so that no member would be charged a fee. The Court did not sanction control by the union of any fee to be charged by the attorney. Indeed, the Court did not sanction any interference by the union in any attorney-client relationship arising between the attorney and the union member. Contrary to petitioner's assertion, retaining any attorney on a salary basis by the union is not an example of ultimate control of the fee but rather total elimination of all fees. Thus, in such a circumstance, the member receives the recovery in full without one cent deducted for attorney's fees.

e. *Accepting compensation for solicitation:* —The Supreme Court held that acceptance of a retainer by an attorney stemming from the proper activities of the union was constitutionally protected and that no action could be taken against the attorney. The Court below did not sanction conduct by the attorney which was itself unethical and it, specifically, did not sanction any payment by the attorney to the union in return for its recommendation to its members that he be retained.

f. *Sharing in legal fees:* —The Supreme Court held that acceptance of a retainer by an attorney stemming from the proper activities of the union was constitutionally protected and that no action could be taken against the attorney. The Court did not sanction conduct by the attorney which was itself unethical and it, specifically, did not sanction the splitting of the attorney's fee with the union or any other lay agency in exchange for its recommending that his services be employed, conduct which would merely constitute a

sophisticated form of paid solicitation of cases by the attorney.

g. *Sharing in any recovery:* —The Supreme Court held that the activities of a union in recommending the hiring of specific legal counsel or the retaining of an attorney on a salary basis to represent members of the union, motivated, as indicated in the record, by a genuine concern on the part of the union for the welfare of its members, are a constitutionally protected form of free speech. The Court did not sanction such conduct where it was motivated by the union's desire to supplement its treasury and, consequently, was not related to an exercise of the constitutional privilege of free speech. Specifically, the Court did not sanction any conduct by the union, involving, as a condition for its recommendation to its members that one or more particular attorneys be employed, that the union ultimately share in any recovery received by the injured or deceased member.

## II.

**DOES THE INJUNCTIVE JUDGMENT ENTERED IN 1968 UPON REMAND FROM THE MICHIGAN SUPREME COURT IN LIGHT OF THE DECISION OF THIS COURT IN TRAINMEN WITHOUT THE TAKING OF ADDITIONAL TESTIMONY VIOLATE DUE PROCESS WHEN THE PRIOR INJUNCTIVE DECREE, MORE COMPREHENSIVE IN SCOPE, ENTERED AFTER A FULL HEARING, CONTAINED SUBSTANTIALLY ALL OF THE INJUNCTIVE PROVISIONS PROVIDED IN THE LATER 1968 INJUNCTION?**

The contention that the decretal injunction in this case is not based upon the pleadings and is not supported by proofs and accordingly, offends "constitutional guarantees of due process" is likewise without foundation.

At the outset, it should be noted that the original decree in this case entered by Judge Dalton in 1962 restrained the defendants from six specific types of activities designated a. through f. which are set forth on pages R. App. p. 125a-126a herein. This decretal order was based upon evidence introduced during the trial and confirmed by findings of the trial judge in his decision (R. App. p. 118a-121a) and the findings contained in the decree (R. App. p. 121a-124a). Encompassed within five of the six restrained activities are all of the specific acts restrained in the 1968 decretal judgment. (See the analysis and comparison of the provisions of the two decrees in footnote 5 below.) Ac-

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[5] *1968 Decretal Judgment*

(Full text at R. App. p. 443a-444a)

1. Giving or furnishing legal advice to its members or their families.

2. Informing any lawyer or lawyers that an accident has been suffered by a member or nonmember of the said Brotherhood and furnishing the name and address of such injured or deceased person for the purpose of obtaining legal employment for any lawyer.

*1962 Decree*

(Full text at R. App. p. 121a-126a)

a. Telling any person or his representatives that said person has a cause of action, the amount he is entitled to recover, where suit should be filed, or doing any other act or thing which constitutes the practice of law within the State of Michigan;

b. Negotiating or attempting to negotiate contracts of employment for legal services on behalf of any lawyer or lawyers;

d. Making unsolicited calls upon any person for the purpose of soliciting contracts for the employment of a lawyer***;

e. Engaging in any activity, conduct or endeavor condemned by the Supreme Court of Illinois in *In Re Brotherhood of Railroad Trainmen*, 150 Northeastern Reporter 2nd, 163.

(continued on next page)

cordingly, not only were there appropriate pleadings but the evidence advanced at the trial resulting in the original findings and decree were adequately sufficient to support the later decretal judgment. Appellee submits there was no failure to provide appellants with the traditional requisites of procedural due process, viz; notice, the right to be heard and a resolution of the matter in a manner consistent with essential fairness.

The cases cited by petitioner on page 18 of the petition in support of the contention that "Even where there has been proof of the commission of unlawful acts, other unlawful acts disassociated from those proven should be stricken from an injunction decree." are not in point on

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| 3. From stating or suggesting that a recommended lawyer will defray expenses of any kind or make advances for any purpose to such injured persons or their families pending settlement of their claim. | e. See text of e. above. |
| 4. Controlling, directly or indirectly, the fees charged or to be charged by any lawyer. | b. and e. See above for texts of b. and e. |
| 5. From accepting or receiving compensation of any kind, directly or indirectly, for the solicitation of legal employment for any lawyer, whether by way of salary, commission or otherwise. | c. Accepting pay or any gratuity or benefit whatsoever, directly or indirectly, from any lawyer, person or organization for services in obtaining contracts of employment for legal services; and e. above. |
| 6. From sharing in any manner in the legal fees of any lawyer or countenancing the splitting of or sharing in such fees with any laymen or lay agency. | c. and e. See above for texts of c. and e. |
| 7. From sharing in any recovery for personal injury or death by gift, assignment or otherwise. | c. and e. See above for texts of c. and e. |

the issue here. In none of those cases was the issue of constitutional procedural due process involved. Rather, the question there was the propriety of the scope of the injunction in light of the record made at the trial. The crux of the decision in *State of Wyoming v. State of Colorado* 286 U.S. 494, 76 L. Ed. 1250 (1932) is found under Headnote 3 on page 508 where the following appears:

> "No showing appears to have been made indicative of any occasion at that time for a broader injunction. Of course, in the absence of such showing, a broader injunction was not justified."

In *N.L.R.B. v. Express Publishing Company* 312 U.S. 426, 85 L. Ed. 930 (1941), this Court had under consideration the power of a federal court to restrain acts in violation of the National Labor Relations Act. On page 435-436, this Court said:

> "A Federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the Court has found to have been committed or whose commission in the future, unless enjoined, may fairly be anticipated from the defendant's conduct in the past. But the mere fact that a Court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation *unlike* and *unrelated* to that with which he was originally charged." (Emphasis supplied.)

The same question was before this Court in *Communication Workers of America, AFL-CIO v. N.L.R.B.* 362 U.S. 479, 4 L. Ed. 2d 896 (1960) in which case this Court said:

> "It would seem . . . clear that the authority conferred on the Board to restrain the practice which it has found . . . to have [been] committed is not an

> authority to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct."

Likewise, *In Re Ruffalo* 390 U.S. 544, 20 L. Ed. 2d 117 (1968)* involves a disbarment proceeding wherein the principal charge upon which the respondent attorney was found guilty and disbarment ordered was added to the specification of charges during the course of and on the third day of the trial. This Court stated in the opinion: (p. 551)

> "*** The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh."

This factual situation is far removed from that existing in the instant case. Likewise, in *Willner v. Committee on Character & Fitness* 373 U.S. 96, 10 L. Ed. 2d 224 (1963) Willner was denied admission to the Bar of New York for failure to obtain a favorable certificate from the Character & Fitness Committee of the Appellate Division of the New York Supreme Court. No hearing was had at which Willner could be confronted by witnesses or evidence produced against him. After several petitions by Willner to the Appellate Division of the New York Supreme Court in each of which the decision of the lower Court was affirmed without opinion, he appealed to this Court arguing that "He had been denied his constitutional rights in that he had been denied confrontation of his accusers and that, in spite of the repeated attempts, he could not be sure of the

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* This case is erroneously cited in the petition (p. 19) as 20 L. Ed. 117.

committee's reasons for refusing to certify him for admission" (373 U.S. 102). This Court held that petitioner was denied procedural due process when he was denied admission to the bar by the Appellate Division without a hearing on the charges filed against him before either the committee or the Appellate Division. This is not the case here.

## CONCLUSION

For the reasons above stated, respondent respectfully submits that the petitioner's Petition for Writ of Certiorari in this case be denied.

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